**From:** LERS, EOIR (EOIR)
**To:** LERS, EOIR (EOIR); All of Judges (EOIR); BIA BOARD MEMBERS (EOIR); BIA ATTORNEYS (EOIR); All of OCIJ JLC (EOIR); Alder Reid, Lauren (EOIR); Allen, Patricia M. (EOIR); Baptista, Christina (EOIR); Bauder, Melissa (EOIR); Berkeley, Nathan (EOIR); BIA TEAM JLC; BIA TEAM P (EOIR); Brazill, Caitlin (EOIR); Burgie, Brea (EOIR); Burgus, Elizabeth (EOIR); Cicchini, Daniel (EOIR); Cowles, Jon (EOIR); Curry, Michelle (EOIR); Evans, Brianna (EOIR); Grodin, Edward (EOIR); Hartman, Alexander (EOIR); Kaplan, Matthew (EOIR); King, Jean (EOIR); Korniluk, Artur (EOIR); Lang, Steven (EOIR); Lovejoy, Erin (EOIR); Martinez, Casey L. (EOIR); Noferi, Mark (EOIR); Park, Jeannie (EOIR); Powell, Karen B. (EOIR); Ramirez, Sergio (EOIR); Rimmer, Phillip (EOIR); Robbins, Laura (EOIR); Rodrigues, Paul A. (EOIR); Rodriguez, Bernardo (EOIR); Rothwarf, Marta (EOIR); Sanders, John W. (EOIR); Schaaf, Joseph R. (EOIR); Stutman, Robin M. (EOIR); Swanwick, Daniel (EOIR); Taufa, Elizabeth (EOIR); Vayo, Elizabeth (EOIR)
**Cc:** McHenry, James (EOIR); Reilly, Katherine (EOIR); Santoro, Christopher A (EOIR); Sheehey, Kate (EOIR); Moutinho, Deborah (EOIR); Adams, Amanda (EOIR); Pease, Jeffrey (EOIR); Morgan, Kenosha (EOIR); Macri, Andrea (EOIR); EOIR Library (EOIR)
**Subject:** Policy & Case Law Bulletin - June 15, 2018
**Date:** Friday, June 15, 2018 3:28:32 PM

---

EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
Office of Policy | Legal Education and Research Services Division

# Policy & Case Law Bulletin
June 15, 2018

## Federal Agencies

DOJ

- Attorney General Issues Decision in Matter of A-B-

  27 I&N Dec. 316 (A.G. 2018)

  (1) Matter of A-R-C-G-, 26 I&N Dec. 388 (BIA 2014) is overruled. That decision was wrongly decided and should not have been issued as a precedential decision. (2) An applicant seeking to establish persecution on account of membership in a "particular social group" must demonstrate: (1) membership in a group, which is composed of members who share a common immutable characteristic, is defined with particularity, and is socially distinct within the society in question; and (2) that membership in the group is a central reason for her persecution. When the alleged persecutor is someone unaffiliated with the government, the applicant must also show that her home government is unwilling or unable to protect her. (3) An asylum applicant has the burden of showing her eligibility for asylum. The applicant must present facts that establish each element of the standard, and the asylum officer, immigration judge, or the Board has the duty to determine whether those facts satisfy all of those elements. (4) If an asylum application is fatally flawed in one respect, an immigration judge or the Board need not examine the remaining elements of the asylum claim. (5) The mere fact that a country may have problems effectively policing certain crimes or that certain populations are more likely to be victims of crime, cannot itself establish an asylum claim. (6) To be cognizable, a particular social group must exist independently of the harm asserted in an application for asylum. (7) An applicant seeking to establish persecution based on violent conduct of a private actor must show more than the government's difficulty controlling private behavior. The applicant must show that the government condoned the private actions or demonstrated an inability to protect the victims. (8) An applicant seeking asylum based on membership in a particular social group must clearly indicate on the record the exact delineation of any proposed particular social group. (9) The Board, immigration judges, and all asylum officers must consider, consistent with the regulations, whether internal relocation in the alien's home country presents a reasonable alternative before granting asylum.

- OCAHO Issues Decision in M.S. v. Dave S.B. Hoon – John Wayne Cancer Institute — EOIR

  12 OCAHO no. 1305a (2018)

  The complaint was dismissed as untimely because the complainant filed the charge more than 180 days after the alleged discriminatory conduct occurred and thereby failed to meet a condition precedent to filing the 8 U.S.C. 1324b complaint with OCAHO. "The contact M.S. made with [the Department of Justice Immigrant and Employee Rights Section (IER)] within the statutory period is insufficient to constitute a charge because it was not 'minimally sufficient.' . . . There is also no basis to equitably toll the statute of limitations because complainant had actual notice of the statute of limitations and ignored IER's warning that a charge must be timely filed."

- OCIJ Issues OPPM 18-02: Definitions and Use of Adjournment, Call-up, and Case Identification Codes — EOIR

  "This OPPM rescinds OPPM 17-02, Definitions and Use of Adjournment, Call-up, and Case Identification Codes, dated October 5, 2017, and sets forth updated adjournment, call-up, and case identification codes used to track the case hearing process."

- Virtual Law Library Weekly Update — EOIR

  This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DHS

- DHS Announces Strengthened Northern Border Strategy

  On June 12, 2018, DHS published an updated Northern Border Strategy intended to "• Enhance border security operations through better information sharing, improved domain awareness, and integrated operations; • Facilitate and safeguard lawful trade and travel by enhancing rapid inspection and screening, enforcing a fair trade environment, and bolstering border infrastructure; [and] • Promote cross-border resilience by supporting response and recovery capabilities between federal, state, local, tribal, and Canadian partners."

DOS

- DOS Updates 9 FAM

  DOS made multiple updates to 9 FAM, including to section 402.3 (U), updating processing procedures for applicants of A, G, and NATO Visas and definitions of their dependents, updating designated international organizations, and updating minimum wage requirements; sections 201.1 (U) and 303.9 (U), updating Swaziland to Eswatini; and section 203.6 (U), related to "processing V92/V93 cases."

## Supreme Court

CERT. DENIED

- Sessions v. Mateo

  No. 17-1235, 2018 U.S. LEXIS 3673 (June 11, 2018)

  Question Presented: Whether 18 U.S.C. 16(b), as incorporated into the Immigration and Nationality Act's provisions governing an alien's removal from the United States, is unconstitutionally vague.

## Second Circuit

- Seepersad v. Sessions

  No. 16-64, 2018 WL 2746465 (2d Cir. June 8, 2018) (Waivers)

  The Second Circuit denied the PFR, holding that the Board's interpretation of the waiver provision under section 212(h) of the Act does not violate the Equal Protection Clause by distinguishing between those who seek a waiver of inadmissibility while within the United States from those seeking to enter the United States at its borders.

## Sixth Circuit

- Shabo v. Sessions

  No. 17-3881, 2018 WL 2772773 (6th Cir. June 11, 2018) (Jurisdiction; Judicial Review)

  The Sixth Circuit dismissed the PFR as unreviewable, concluding that although the changed country conditions question for Shabo's motion to reopen is potentially a reviewable question of law, the Board's alternative holding that Shabo, who was removable for committing a crime described under section 242(a)(2)(C) of the Act, did not establish a prima facie case that he will likely be tortured is a factual determination that is not reviewable by the court.

- United States v. Lucas

  No. 17-1986, 2018 WL 2754437 (6th Cir. June 7, 2018) (unpublished) (Crime of Violence)

  The Sixth Circuit affirmed the district court's decision concluding that assaultive bank robbery under Mich. Comp. Laws § 750.531 qualifies as a crime of violence as defined by U.S.S.G. § 4B1.2(a), which is analogous to 18 U.S.C. § 16(a). The court explained that "implicit threat of physical force during a bank robbery exists even if the overt action performed by the defendant is confinement." The court also stated that "[b]ank robbery by 'put[ting] in fear' also involves a threat of physical force sufficient to make it a crime of violence." The court rejected the respondent's argument that Michigan courts do not require the defendant to use actual force or overt threats to put someone in fear, and stated that "a person can have a reasonable fear of violent physical harm without an overt threat, and no such overt threat or actual use of force is necessary to make prohibited conduct a crime of violence."

## Seventh Circuit

- Cross v. United States

  No. 17-2282, 2018 WL 2730774 (7th Cir. June 7, 2018) (Crime of Violence)

  The Seventh Circuit determined that a conviction for simple robbery in violation of Wis. Stat. Ann. § 943.32(1) did not qualify as a predicate "crime of violence" under the elements clause of U.S.S.G. § 4B1.2(a), which is analogous to 18 U.S.C. § 16(a). The court relied on case law from the Wisconsin Supreme Court, which has stated that requisite force was "not to be confounded with violence" and the "degree of force used by the defendant is immaterial," quoting Walton v. State, 64 Wis.2d 36, 43-44 (Wis. 1974).

## Eighth Circuit

- Miranda v. Sessions

  No. 17-1430, 2018 WL 2770973 (8th Cir. June 11, 2018) (Asylum/WH-PSG)

  The Eighth Circuit denied the PFR, upholding the Board's conclusion that the proposed social group of "former taxi drivers from Quezaltepeque who have witnessed a gang

murder" did not constitute a cognizable particular social group for purposes of withholding of removal because there was insufficient evidence that the group is socially distinct in El Salvador.

- Camick v. Sessions

  No. 16-3506, 2018 WL 2750268 (8th Cir. June 8, 2018)) (Voluntary Departure)

  The Eighth Circuit denied the PFR, applying the reasoning in Dada v. Mukasey, 554 U.S. 1 (2008) to conclude that Camick's appeal to the Board was untimely because it was filed after the termination of the pre-conclusion voluntary departure period, regardless of whether it was timely filed under the BIA's procedural regulations.

## Ninth Circuit

- Quintero-Cisneros v. Sessions

  No. 13-72632, 2018 WL 2771030 (9th Cir. June 11, 2018) (Aggravated Felony)

  The Ninth Circuit denied the PFR, upholding the Board's conclusion that a Washington conviction for third degree assault of a child under Wash. Rev. Code § 9A.36.140(1) constituted an aggravated felony sexual abuse of a minor because "sexual motivation" was an element of the offense.

- United States v. Edling

  No. 16-10457, 2018 WL 2752208 (9th Cir. June 8, 2018) (Crime of Violence)

  The Ninth Circuit concluded that a conviction for assault with a deadly weapon in violation of Nev. Rev. Stat. § 200.471 is a crime of violence under the elements clause of U.S.S.G. § 4B1.2(a), which is analogous to 18 U.S.C. § 16(a). The court determined that the statute is divisible into multiple versions of the offense as defined in subsection (2). The court explained that since the "offense requires proof that the defendant placed the victim in fear of bodily harm through the use of (or present ability to use) a deadly weapon, it necessarily entails the use or threatened use of violent physical force against the person of another." The court also determined that a conviction for robbery in violation of Nev. Rev. Stat. § 200.380 did not qualify as a "crime of violence" under the elements clause of U.S.S.G. § 4B1.2(a) because the robbery statute covers force directed against property. Lastly, the court held that a conviction for coercion in violation of Nev. Rev. Stat. § 207.190 did not qualify as a "crime of violence" under the elements clause of U.S.S.G. § 4B1.2(a) because it does not involve "the kind of violent physical force necessary to satisfy the Johnson standard," citing Johnson v. United States, 559 U.S. 133 (2010).

## Eleventh Circuit

- Meridor v. U.S. Attorney Gen.

  No. 15-14569, 2018 WL 2728061 (11th Cir. June 7, 2018) (Waivers)

  The Eleventh Circuit granted the PFR, holding that the plain language of section 212(d)(3)(A) of the Act grants Immigration Judges the authority to issue waivers of inadmissibility for U visa applications, and that the Board improperly employed a de novo standard of review in reversing the IJ's factual determination relating to the risk of future harm to Meridor.